Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-1857

ALCOA STEAMSHIP COMPANY, INC. (a New York corporation),

Petitioner,

against

M/V NORDIC REGENT, her boilers, tackle, machinery and other appurtenances *in rem* and NORCROSS SHIPPING CO., INC. (a Liberian corporation), as her owner *in personam,*

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Respondent's Brief in Opposition to Alcoa Steamship Company's Petition for a Writ of Certiorari contains many distortions, inaccuracies and fallacious arguments which will not be dealt with here. However, one egregiously misleading partial quotation from a decision of this Court demands a response under Rule 22.5 (old Rule 24.4).

On page 11 of Respondent's Brief in Opposition in note 6, Respondent alters a quotation from *Koster* v. *Lumbermens Mutual Casualty Co.* 330 U.S. 518, 528 (1947) to read as follows: "[Corporate citizenship] might be entitled to little consideration under the doctrine of *forum non conveniens,* which resists formalization and looks to the realities that make for doing justice." It is argued solely on the basis of this "quotation" that *Koster* supports Respondent's contentions.

Not so. The bracketed words are not synonymous with the omitted words. The sentence preceding the quotation reads: "Under modern conditions corporations often obtain their charters from states where they no more than maintain an agent to comply with local requirements, while every other activity is conducted far from the chartering state." The passage then continues with the words for which Respondent's "quote" with its bracketed

phrase is a substitute, "Place of corporate domicile *in such circumstances* might be entitled to little consideration under the doctrine of *forum non conveniens*. . . ." *Id.* at 527-528 (emphasis added). But the first sentence quoted just above makes it plain that those are the very reverse of the "circumstances" of *this* case: Alcoa Steamship not only was incorporated in New York in 1925; its principal place of business is and always has been in Manhattan where all executive decisions are made and board meetings held. Alcoa Steamship more than meets the criteria set forth at pages 528-529 of *Koster* as being the basis for a reversal in *Williams v. Green Bay & Western R.R. Co.*, 326 U.S. 549 (1946), a case cited and discussed by this Court on the very same page, 330 U.S. 528, from which Respondent has excerpted the truncated *Koster* quotation. The United States District Court for the Southern District of New York is Alcoa Steamship's home forum in every sense of the word.

Petitioner cannot say this much about a single point concerning *Koster* without adding that the issues in the present case are indeed little touched by *Koster* and *Gilbert*—cases in no way resembling this one on their actual facts or particular issues, and, most importantly, cases concerning dismissal to another forum *within the United States*. Nothing in either of them tends in any way to disparage the importance of this Court's deciding, *as it has never before decided*, whether and under what circumstances a resident American plaintiff may be dismissed (on forum non conveniens grounds) from its home forum, clear out of the United States, to a wholly foreign court and to an inadequate foreign remedy.

Dated: July 15, 1980

Respectfully submitted,

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